

BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 19

SWISSPORT USA, INC.

Employer

and

Case 19-RC-14243

INTERNATIONAL ASSOCIATION OF
MACHINISTS & AEROSPACE WORKERS,
DISTRICT LODGE 141M, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds¹:

(1) The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein; and

(2) The four disputed employees, Dan Nix, Ken Bush, Mark Knighton, and Nathan Bakke, are statutory supervisors under Section 2(11) of the Act; and

(3) The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All regular part-time and full-time ground handlers employed by the Employer at its Pasco, Washington facility; but excluding all office clerical employees, professional employees, managerial employees, guards and supervisors as defined in the Act.

SUMMARY:

The Employer provides baggage and cargo handling, aircraft cleaning, and de-icing services to Delta Airlines in numerous locations, including the Tri-Cities Airport in Pasco, Washington. The Petitioner seeks a unit of fourteen employees, including all regular part-time

¹ The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed; the labor organization involved claims to represent certain employees of the Employer; and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

and full-time ground handlers employed by the Employer at its Pasco facility. Although the Employer and Petitioner agree to the petitioned for unit, two issues have been presented. The first issue is whether the Employer is subject to the NLRA or to the Railway Labor Act (RLA). The Petitioner and Employer assert the Employer is subject to the jurisdiction of the NLRA.² Secondly, if the Employer is subject to the NLRA, the Employer contends that four of the fourteen proposed employees are statutory supervisors. I find below that the Employer is subject to the NLRA, and further find that the four disputed employees are statutory supervisors under Section 2(11) of the Act.

JURISDICTIONAL FACTS:

Although the Employer has been operating facilities at the airport in Pasco, Washington only since 1998, it has, under various names, been operating approximately 23 similar facilities throughout the United States for many years. From approximately the late 1960's to 1988, the Employer was known as Servair. From 1988 to September 2000, it was called Dynair. Since September 2000, the company has been operating as Swissport USA. Throughout most of this time, the Employer has had collective bargaining relationships with labor organizations under the auspices of the NLRB. Further, the Employer, while operating as Servair and Dynair, admitted to jurisdiction in several Board cases.³ As recently as March 14, 2001, this agency, in an unpublished decision, certified the results of a decertification petition regarding the Employer's facility in New York.

At its Pasco facility, the Employer performs services for Delta Airlines pursuant to a Ground Services Agreement ("the Agreement"). The Agreement specifies the services to be provided to Delta including ramp, cargo and mail handling, cabin cleaning, de-icing, and maintenance duties. Swissport is required to ensure such services are fulfilled without daily oversight from Delta. The Agreement requires Swissport to maintain a supervisor on location at all times to oversee the work of its employees. Although the Agreement specifies the exact services to be provided, Swissport determines how and when its employees will accomplish the services in order to meet the flight schedules. Delta is not involved in the supervision or evaluations of Swissport employees. The Agreement provides that Swissport is an "independent contractor" and that all personnel used by Swissport "shall be employees of [Swissport] and under no circumstances shall be deemed employees of Delta." It further specifies that Swissport is fully responsible for paying its employees and shall withhold all applicable taxes and unemployment insurance.

Swissport is required to maintain its own liability and automobile insurance, naming Delta as an additional insured. The Agreement requires Swissport to conduct background checks and conduct drug and alcohol testing, all in accordance with Delta's FAA-approved/mandated program, which Delta is required to impose upon its contractors as well. In addition, Swissport is required to follow safety rules. However, Delta does not dictate the rules - Swissport follows industry standards in addition to its own manual. Swissport must also keep records regarding training, background checks, and drug and alcohol testing, which may be reviewed by Delta personnel to ensure compliance with its FAA-approved carrier program.

² Jurisdiction is not something the parties can confer on the Board by agreement if the employer is not a statutory employer. Jurisdiction is acquired by Congressional grant of same, as distinguished from discretionary jurisdiction. This issue was raised by the undersigned.

³ *Local 732, Teamsters*, 229 NLRB 392 (1977), *Servair, Inc.*, 236 NLRB 1278 (1978), *Local 295, Teamsters*, 255 NLRB 1091 (1981), *Dynair Services, Inc.*, 314 NLRB 161 (1994).

However, Delta does not have access to Swissport personnel files. Delta provides office space and a break room for Swissport employees. Such facilities are not used by Delta employees.

The Agreement does not regulate the Employer's human resource or payroll functions. All personnel paperwork is developed solely by Swissport. Swissport interviews, hires, fires, and disciplines its employees without any involvement from Delta. Based on the flight activity and services needed for a given week, Swissport determines its level of staffing. Likewise, Swissport determines its own scheduling and overtime needs. If a carrier, including Delta, requests that Swissport discipline or terminate an employee, Swissport will only do so if its own investigation substantiates the request. However, most of the time, rather than terminating an employee, Swissport would simply move the employee to perform services for another carrier. Swissport determines the wage rates, health benefits, fringe benefits, and retirement plans for its employees without consultation or approval from Delta. Swissport employees follow work rules and policies developed and maintained by Swissport management. Such rules and policies are contained in Swissport's Employee Handbook, which is presented to each of its employees. Swissport provides its employees with Swissport uniform and badges and trains its employees on such issues as safety, de-icing, ramp work, hazmat, lavatory service, and cabin cleaning. The Agreement with Delta provides for cost-plus remuneration, not to exceed a certain amount.

JURISDICTIONAL ANALYSIS AND CONCLUSION:

Based on the evidence in the record, I conclude that the Board has jurisdiction over the Employer, as it is clear that the Employer is subject to the NLRA.⁴

In reaching this conclusion, I first find that the jurisdictional issue should not be deferred to the National Mediation Board (NMB) for an initial decision. Traditionally, the Board has followed a general practice of referring cases to the NMB when an NMB vs. NLRB jurisdictional issue arises. However, the Board will not defer cases to the NMB for an initial decision when the Board has previously frequently exercised uncontested jurisdiction. *United Parcel Serv.*, 318 NLRB 778 (1995).⁵ In *Federal Express Corp.*, 317 NLRB 1155 (1995), the Board decided to continue its practice of referring cases to the NMB when the jurisdictional issue was in doubt. However, the Board stated that if an employer is clearly subject to the NLRA, the case should not be deferred to the NMB. *Id.* at n. 5. In the instant case, as the Board has on several occasions exercised uncontested jurisdiction over this employer, it is appropriate for the Board to decide the jurisdictional issue.

The NMB will assert jurisdiction in either of two instances. In the first instance, the NMB will assert jurisdiction if the company is a common carrier by air for the transportation of freight or passengers. *Command Security Corp.*, 27 NMB 581 (2000). If an employer is not a carrier, the NMB can still assert jurisdiction pursuant to a two-prong test. In the first prong, the function test, the NMB determines if the nature of the work is that which is traditionally performed by carriers. *Id.* at 582. In the second prong, the control test, the NMB determines if the employer is directly or indirectly owned or controlled by, or under the control of a carrier. *Id.* Both prongs of the test must be satisfied in order for NMB to assert jurisdiction. Here, there is no contention or evidence that Respondent is a common air carrier. Thus, the jurisdictional issue is to be determined by an analysis of the two-prong test.

⁴ There is no question that the Employer meets the board's discretionary standards.

⁵ The case does not state how much prior assertion of jurisdiction is enough to warrant Board, as agreed to NMB, determination.

As part of their daily activities, the employees regularly perform baggage and cargo handling and aircraft cleaning for Delta. Since these are functions traditionally performed by air carrier employees, the first prong of the test is fulfilled. *Evergreen Aviation Ground Logistics Enter., Inc.*, 25 NMB 460 (1998).

In analyzing the second prong of the test, the NMB examines, among other things, (1) the carrier's role in the entity's daily operations, conditions of employment, hiring, firing, and supervision of the entity's employees; (2) the employees' performance of services for the carrier; (3) whether employees are held out to the public as the carrier's employees; (4) the carrier's access to the entity's operations and records; and (5) the degree of carrier control over employee training. *Id.* at 464; *Ogden Aviation Servs.*, 13 NMB 98, 105 (1996).

The carrier's role in the personnel matters of the Employer are limited. Although the specifications for services performed by the employees are precisely dictated by the Agreement, such services are performed exclusively under Swissport supervision. Moreover, the carrier plays no part in interviewing, hiring, firing, disciplining, compensating, evaluating, or scheduling Swissport's employees. In addition, as the employees wear Swissport uniforms and badges, they are held out to the public as Swissport employees. Further, Delta's access to Swissport's records is strictly limited to training, background checks, and drug and alcohol testing files. Such access, and the requirements to conduct and keep such records, is solely to ensure federally mandated compliance with federal safety and security requirements. Delta has no access to the employees' personnel files. Finally, all employees training is conducted by Swissport. These facts, and the record as a whole, establish that the Employer is not controlled by a carrier. Thus, the second prong of the jurisdictional test is not satisfied. I, therefore, conclude that the Employer is not subject to the RLA, but rather is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Board has jurisdiction over the Employer.

SUPERVISORY FACTS:

In providing ground services (baggage and cargo handling, aircraft cleaning, maintenance and de-icing) to Delta, the Employer operates seven days a week, with two shifts per day. The day shift is from 4:45 a.m. to 1:45 p.m. and the night shift is from 4:00 p.m. to 1:00 a.m. The station manager, Eric Caballero, arrives on site between 9:00 a.m. and 11:00 a.m. and departs between 6:00 p.m. and 7:00 p.m., Monday through Friday. The station manager is responsible for overseeing the day-to-day operations of the facility. In addition to the station manager, the Employer employs four "shift supervisors." Dan Nix is the day shift supervisor, Ken Bush is the night shift supervisor, Mark Knighton is the weekend relief supervisor and Daniel Bakke is the Friday and relief supervisor. Presumably, Caballero is on site for part of Nix's shift, and perhaps part of Bakke's shift. The record did not reveal how many employees work on each shift, but there are a total of 14 employees and contested supervisors.⁶ The Employer alleges these four individuals are statutory supervisors under the Act.

Nix was the only alleged supervisor to testify at the hearing. Nix has been a supervisor for approximately two years. He stated that his duties as a supervisor "were to be in charge of the operations on the ramp, getting the aircraft out on time, making sure that all the employees were safe, and basically, that all the cargo and luggage and stuff was loaded correctly on the

⁶ Two of the supervisors function as regular employees on the days they do not supervise.

plane; make sure that we got operations going within the time limits that we had." No specific details as to his daily duties and routine were provided.

The station manager, Caballero, is in charge of the hiring and interviewing process and normally conducts the interviews on his own. Caballero makes the final hiring determination. Caballero initially testified that at times the shift supervisors sit in on interviews with him and provide recommendations. However, more detailed testimony provided the following information. Nix testified that he sat in on one interview with Caballero, but did not make a hiring recommendation. Bush conducted one interview, because the station manager was out of town. There is no evidence that he participated in any other interview. Bakke may have sat in on one or two interviews, but no details were provided. Knighton, who had only been a supervisor for two weeks at the time of the hearing, has not participated in any interviews.

Caballero testified that when he is on site, he tells the supervisor what extra tasks aside from ground services need to be completed and, in turn, the supervisor assigns the work to the employees. If Caballero is not on site, the supervisors make the determinations themselves. On a daily basis, such assignments include weeding, picking up paper, computer tasks, changing the oil in ground equipment, and ensuring that certain vehicles are checked. Caballero testified that supervisors assign this work based on necessity and the ability of the employees.

Caballero also testified that Bakke assists him in scheduling when Caballero is not able to craft a schedule. However, the record does not reveal how often this took place and just what part Bakke performed; there is no evidence that any of the other supervisors participate in scheduling. Caballero further testified that the supervisors have the authority to send employees home, although it rarely happens. Nix testified that he has never sent anyone home. However, Nix testified that he does call employees in to work who are not scheduled when someone calls in sick or if extra help is needed. Extra employees are needed, for example, when a plane is diverted to Pasco. Nix initially calls employees who are on standby, but if they are unavailable, he calls in other employees. The record does not indicate how he decides which employee will be called in. Nix further testified that employees trade shifts and such shifts are generally approved by the supervisors. However, Nix testified that if the shift involves overtime, he must get clearance from the station manager.

Caballero testified generally that all four supervisors have the authority to discipline employees when he is not on site. Nix testified that although he has the authority to give employees verbal warnings and note this on a disciplinary slip, the shift supervisors do not determine the level of discipline. Nix stated that he only issues verbal discipline as there is no way for him to determine if the employee was previously disciplined, since supervisors do not have access to personnel files. Nix further testified that he was instructed to discipline people for failure to report to work or poor work performance. Although there is evidence that supervisors have filled in disciplinary forms, it appears that the shift supervisors merely report problems with employees to Caballero, rather than actually making any recommendations. However, the supervisors do discuss the substance of the discipline with the affected employee. In addition, Nix testified that as a supervisor, he was ultimately responsible for the actions of the employees, and if he did not discipline an employee for a violation, *he* would then be held responsible for the incident.

There is no evidence that the four have any effective role in terminating, laying off, or suspending employees.

Caballero testified that although he normally conducts performance evaluations, he sometimes solicits information from the supervisors to evaluate other employees. Nix testified that on one occasion he filled in an evaluation at the request of Caballero. Caballero solicited the input as the evaluated employee complained about Caballero's initial evaluation. There was no testimony as to the ultimate effect of Nix's input in the process. There was also no testimony as to any other specific examples of supervisory input or how often the input was solicited. There was also no testimony as to the effect of the evaluations on the employees' job or wages.

Nix, Bakke, and Bush are paid approximately \$1.50 to \$1.75 more than the other employees, who make approximately \$8.00 per hour. Knighton, however, earns \$7.50 per hour as he has only been with the Employer for a short time.

SUPERVISORY ANALYSIS AND CONCLUSION:

Section 2(11) of the Act enumerates the twelve functions that establish supervisory status:

[A]uthority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of merely routine or clerical nature, but requires the use of independent judgment. 29 U.S.C. § 152(11) (*emphasis added*).

Under Section 2(11), employees are statutory supervisors if (1) they hold the authority to engage in any one of the twelve supervisory functions as listed above, "(2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer.'" *Kentucky River Community Care*, 121 S.Ct. 1861, 1867 (2001). The burden of establishing supervisory status rests on the party asserting the status exists. *Id.* at 1866 - 67. Having considered all the evidence, and as discussed below, I find Nix, Bush, Bakke and Knighton, are statutory supervisors based on their responsible direction of the workforce.

The Supreme Court in *Kentucky River* emphasized that the degree, not the kind, of independent judgment is critical with respect to a finding of supervisory status. Put another way, the judgments made by an individual must be of a level of difficulty exceeding "merely routine or clerical [in] nature". *Section 2(11)*. However, the complexity of a given task is deemed equally complex, or not, regardless of the identity of the performer. A judgment that would be complex for, say, a high school graduate, does not become routine or clerical when performed by a Ph.D. Complexity is evaluated in an absolute scale (presumably based on an "ordinary" person), not a scale varying according to the training or schooling or experience of the judgment maker. The Court, citing *Chevron Shipping Co.*, 320 NLRB 717, 729 (1996), found that if an employer constrains the degree of judgment by, for example, detailed orders or regulations, the individual may not rise to the level of a statutory supervisor. In *Chevron*, the Board found that although second and third mates acting as watch officers were responsible for "directing the unlicensed employees, assigning tasks, and ensuring the safety of the ship and its cargo ... their exercise of independent judgment was circumscribed by the master's standing orders, and the Operating Regulations, which required watch officers to contact a superior when anything unusual occurred or when problems occurred." The standing orders detailed the officers' and crewmembers' duties and tasks. Further, watch officers had to be in constant

contact with superior officers when there were deviations from the routine situations and had to notify the captain when they made any decisions on their own. Thus, their judgment was not “independent”, and the Board found the officers to be employees rather than statutory supervisors.

In *Monongahela Power Co. v. NLRB*, 657 F.2d 608, 613 (4th Cir. 1981), cited with approval by the Board in *DST Industries*, 310 NLRB 957 (1993), the court found five foremen to be statutory supervisors based on their responsible direction of other employees, despite the fact that the daily operation was to some extent governed by written procedures and guidelines. In coming to this conclusion, the court defined “responsibility” as being “answerable for the discharge of a duty or obligation. Responsibility includes judgment, skill, ability, capacity, and is implied by power.” *Id.* at 613. In that case, the court found that the alleged supervisors were responsible for coordinating the activities of employees, analyzed and resolved machinery problems, put employees to work when needed, and resolved difficulties if higher level supervisors were unavailable. The court reasoned that if an employee “must coordinate the activities of several other employees to ensure the smooth operation of delicate machinery, [the employee] necessarily exercises a significant degree of independent judgment.” *Id.* at 614.

In the instant case, I find the evidence insufficient to establish the shift supervisors possess any of the indicia of statutory supervisory authority other than the use of independent judgment in responsibly directing the workforce. The evidence is insufficient to find that the supervisors have actual authority to hire or to make effective recommendations. There is only evidence of one instance in which one of the shift supervisors was permitted to hire an employee. However, the evidence showed that Caballero is in charge of hiring and that Bush hired the individual only because Caballero was out of town. The Board will not find supervisory status based on an isolated assumption of duty. *St. Francis Medical Center-West*, 323 NLRB 1046, 1046-1047 (1997). There is no specific evidence of any effective hiring recommendations. There is also insufficient evidence showing the supervisors determine or effectively recommend transfers, suspensions, lay offs, recalls, promotions, terminations or rewards.

The record does not reflect how the majority of the ground services work is assigned to shift employees. Is it determined by Caballero’s schedule, or do the supervisors simply have a crew assigned to them, and then they must juggle from moment to moment? However, there is testimony that the shift supervisors assign extra tasks, such as weeding or picking up papers, on a regular basis. Although this does involve some degree of *independent* judgment, I find that the assignment of such duties has not been shown to be beyond “routine” or “clerical” in complexity. *Azusa Ranch Market*, 321 NLRB 811, 812 (1996).

Regarding discipline, there is no showing that the supervisors were involved in anything more than merely relaying information to Caballero, rather than effectively recommending action. *Passavant Health Center*, 284 NLRB 887 (1987). Further, factual reporting of oral reprimands, and the issuance of written warnings that do not alone affect job status or tenure, do not constitute supervisory authority. *Id.* at 889. Absent evidence that disciplinary warnings have any effect on the employee’s employment status and evidence as to what happened to the warning after it was given to the employee, the mere issuance of a written warning is insufficient to establish supervisory authority. *Azuza Ranch Market*, 321 NLRB 811, 812-813 (1996). In addition, there was insufficient evidence showing a direct correlation between the employee evaluations and merit increases. Without such a correlation, the Board will not find that the persons who perform the evaluations have statutory supervisory authority. *Beverly Enterprises – Massachusetts*, 329 NLRB No. 28 (1999).

We turn then to the last remaining indicium, “responsibly direct” employees. The evidence reveals that the four alleged supervisors responsibly direct the work force within the meaning of § 2(11) of the Act. According to Nix’s testimony, supervisors are in charge of the operations on the ramp and ensure the aircraft leave on time, ensure employee safety, and ensure the planes are correctly loaded. All four supervisors are the highest level of management on site at least for part of their shifts and are viewed by the employees as supervisors. They are, as Nix stated, completely responsible for operations when the station manager is not present. There is no showing they are in regular phone contact with Caballero, or are expected to bring non-routine matters to his immediate attention. As Bush and Knighton work the night shift and the weekends respectively, they are completely in charge during their respective entire shifts. The fact that Knighton is a supervisor two days of the week and Bakke on Fridays and when needed - both acting as employees at other times - does not negate that supervisory status, as the supervisory work is regularly scheduled, as opposed to brief and sporadic. *St. Francis Medical Center-West*, 323 NLRB at 1046-1047. In fulfilling the duties outlined by Nix, the supervisors counsel the employees regarding infractions affecting the operations. Although the consultation with, and discipline of, employees standing alone does not rise to the level of meeting the statutory indicium of “discipline employees”, the fact that the supervisors address concerns to employees about their work enhances a finding of “responsible direction,” although certainly not enough to do so by itself. Further, Nix testified that he is held personally responsible for any employee infractions which he does not address.

In addition to counseling employees, the supervisors must be attentive to the necessity of a complete work force and must coordinate performance of the contracted services to ensure smooth operations. If a situation arises in which the supervisor believes additional employees are needed on site in order to continue operations, the supervisor, using his own judgment, calls in additional employees. (The record does not indicate whether he can order an employee to work, or simply request or cajole.) There is no evidence that this exercise of independent judgment is circumscribed by directives or consultation with higher management. Although the services to be provided to Delta are listed in detail, the supervisory duties are not.

“Responsible direction” is not dependent on the complexity or difficulty of the work of the directed employees. The test is whether the supervisors exercise judgment without consultation with higher officials in assessing the situations and whether they utilize their authority in ensuring the work is done correctly. *Holiday Inn of Dunkirk-Fredonia*, 211 NLRB 461 (1974). As in *Monongahela Power*, the employees here are “answerable for the discharge of a duty or obligation” and use their skills, abilities and experience in directing the workforce. The supervisors coordinate the activities of employees, analyze and address infractions, and put employees to work when needed, without the involvement of the station manager. Taken as a whole, this evidence establishes responsible direction with the necessary exercise of a significant degree of independent judgment.⁷

As stated, the twelve statutory indicia are in the disjunctive; thus, only one need exist to confer supervisory status on an individual. Having considered all the evidence relating to Nix,

⁷ “Responsible direction” can involve a variety of supervisory activities. Some of these may be functions which could be considered under other specific indicia, but which are not “strong” enough to meet those indicia. For example, the fact that one reports misconduct to a higher supervisor and gives verbal reprimands, are not without more sufficient to constitute “discipline” under Section 2(11). Nevertheless, these items could be considered as part of a collection of attributes that might constitute “responsible direction”.

Bush, Bakke and Knighton, I conclude that they are statutory supervisors based on their authority to responsibly direct the work force while utilizing independent judgment.

There are approximately 10 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the Unit found appropriate, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, DISTRICT LODGE 141M, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the alphabetized full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 19 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office, 915 Second Avenue, 29th Floor, Seattle, Washington 98174, on or before May 31, 2002. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (206) 220-6305. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 7th, 2002. [Because of delays of US Mail directed to US government addresses in D.C., use of alternative delivery modes is strongly suggested].

DATED at Seattle, Washington, this 24th day of May 2002.

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177-8520-1600
177-1683-7500